

§ 143-214.2A. Prohibited disposal of medical waste.

(a) Violation. – It is unlawful for any person to engage in conduct which causes or results in the dumping, discharging, or disposal directly or indirectly, of any medical waste as defined in G.S. 130A-290 to the open waters of the Atlantic Ocean over which the State has jurisdiction or to any waters of the State.

(b) Civil Penalty. –

- (1) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person for a first violation of this section and an additional penalty of twenty-five thousand dollars (\$25,000) may be assessed for each day during which the violation continues. A civil penalty of not more than fifty thousand dollars (\$50,000) may be assessed by the Secretary for a second or further violation and an additional penalty of fifty thousand dollars (\$50,000) may be assessed for each day during which the violation continues.
- (2) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
- (3) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.
- (4) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
- (5) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (3) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (4) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
- (6) Repealed by Session Laws 1995 (Regular Session, 1996).

- (7) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (c) Criminal Penalties. –
 - (1) A person who willfully violates this section is guilty of a Class 1 misdemeanor.
 - (2) A person who willfully violates this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars (\$50,000) per day of violation.
- (d) Restoration. –
 - (1) Any person having control over medical waste discharged in violation of this section shall immediately undertake to collect, remove, and dispose of the medical waste discharged and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the medical waste, the person responsible shall take all practicable actions and measures to otherwise contain, treat, and disperse the medical waste; but no chemical or other dispersants or treatment materials shall be used for such purposes unless they shall have been previously approved by the Department.
 - (2) Notwithstanding the requirements of subdivision (1), the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies, and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary, to collect, investigate, perform surveillance over, remove, contain, treat or disperse or dispose of medical waste discharged into the waters of the State in violation of this section, and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material.
 - (3) Every person owning or having control over medical waste discharged in violation of, or in circumstances likely to constitute a violation of this section, upon discovery that the discharge of medical waste has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain, remove, treat and dispose of the medical waste. The agent or employee of the department receiving the notification shall immediately notify the Secretary or such member of the permanent staff of the Department as the Secretary may designate.
 - (4) Any person who discharges medical waste in violation of this section or violates any order or rule of the Commission regarding the prohibitions concerning medical waste, or fails to perform any duty imposed regarding medical waste, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State, or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, or causes the incurring of costs by the State for the

containment, removal, treatment, or dispersal, or disposal of such medical waste, shall be liable to pay the State damages. Such damages shall be an amount equal to the cost of all reasonable and necessary investigations made or caused to be made by the State in connection with such violation and the sum of money necessary to restock such waters, replenish such resources, contain, remove, treat, or disperse, or dispose of such medical waste, or otherwise restore such waters and adjacent lands prior to the injury as such condition is determined by the Commission in conference with the Wildlife Resources Commission, the Marine Fisheries Commission, and any other State agencies having an interest affected by such violation (or by the designees of any such boards, commissions, and agencies).

- (5) Upon receipt of the estimate of damages caused, the Department shall give written notice by registered or certified mail to the person responsible for the death, killing, or injury to fish, animals, vegetation, or other resources of the State, or any reduction in quality of the waters of the State, or the costs of the removal, treatment or disposal of such discharge, describing the damages and their causes with reasonable specificity, and shall request payment from such person. Damages shall become due and payable upon receipt of such notice. The Environmental Management Commission, if collection or other settlement of the damages is not obtained within a reasonable time, shall bring a civil action to recover such damages in the superior court in the county in which the discharge of waste or the damages to resources occurred, or in Wake County if the discharge or resource damage occurs in the open waters of the Atlantic Ocean. The assessment of damages is not a contested case under G.S. 150B-23.
- (6) "Person having control over medical waste" shall mean, but shall not be limited to, any person using, storing, or transporting medical waste immediately prior to a discharge of such waste into the waters of the State, and specifically shall include carriers and bailees of such medical waste. (1989, c. 742, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 9; 1993, c. 539, ss. 1016, 1312; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 743, s. 12; 1998-215, s. 60.)